

Maryland Lawyer

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Viatical Vindication

After a long fight, Answer Care receiver gets \$2.9 million settlement for one set of investors

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A long-running lawsuit involving a shady life insurance settlement company, a bevy of questionable insurance policies and a murdered porn shop owner has finally settled.

It's a story that starts not with the dead man, Stanley Moore, but with a defunct Baltimore-based company called **Answer Care Inc.**

Answer Care was in the life insurance settlement industry, sometimes called the viatical settlement industry. It would buy up the right to recover on life insurance policies and sell those rights to investors.

With this kind of transaction, the policyholder, who is often terminally ill, gets cash right away, which can help with medical costs. The investors, who purchase at a discount, recover the face amount of the policy.

Moore, though, was a healthy man who took out policies on his own life, then pretended to be terminally ill in order to sell them right away on the viatical market.

But Moore's intentions when he bought the policies weren't enough to

have them declared void, the 4th U.S. Circuit Court of Appeals held.

"Despite Moore's intent to transfer the policy, we agree with the district court that Moore had an insurable interest when he obtained it, preventing the policy from being void ab initio," the 4th Circuit said.

That decision, in turn, paved the way for last month's \$2.9 million settlement of a suit filed by Answer Care's receiver on behalf of the investors who bought out Moore's interest in the policy.

The receiver, **James A. Gordon** of

the consulting firm **Invotex**, praised the resolution of the case. Invotex was represented by **Gallagher, Evelius & Jones LLP** Partner **Paul S. Caiola**.

"Paul and his colleagues held fast through a long period of time of uncertainty, but we were pretty confident in our legal theories and we're vindicated through the decision," Gordon said.

Contestable policies

In the 1990s, Answer Care was sending people out into the gay community to sign HIV-positive men up for life insurance policies, Gordon said. If the



Paul S. Caiola (left) represented the receiver of Answer Care, who sued on behalf of investors when the viatical settlement company was shut down. His associate, David G. Sommer (right), assisted him on the case.

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policy was small enough, no physical examination was required, and the men were instructed not to disclose their HIV-positive status.

Answer Care would then enlist investors to buy into the policies, which were valuable precisely because the men had HIV and were not expected to live long.

But at the time, a life insurance policy in Maryland could be canceled by the insurer within two years of purchase if the insurer found evidence of fraud, and the policies Answer Care was selling were within that two-year contestability period. Answer Care was not disclosing to its investors that the policies were contestable and therefore potentially worthless, Caiola said.

Insurance companies complained about Answer Care to the Maryland Securities Commissioner, which filed suit and “basically shut down the company,” said Assistant Attorney General Lucy Cardwell of the attorney general’s securities division, who worked on the case.

The company was placed in receivership, with Gordon appointed as receiver. Gordon, with Caiola as counsel, began trying to get the Answer Care investors their money back.

“We had a large meeting here in these offices very early on in the receivership and we went to those people [from Answer Care] and we said, ‘We think you’re responsible for these losses and we’d like you to talk among yourselves and pay us some money,’” Gordon said.

“And they said, ‘Perhaps not today.’”

Gordon and Caiola filed suit, but in 2003, the Court of Special Appeals held that the individual investors, not Answer Care’s estate, owned the policies.

That was the backdrop for the Moore case.

In 1997, Moore, a healthy 51-year-old Arizona man, applied for a \$2 million, 10-year term insurance policy from First Penn-Pacific Life Insurance Co., which he later converted to a 20-year policy.

According to the 4th Circuit’s February opinion, the purchase was part of an effort by Moore to profit off the insurance settlement industry. He later bought seven other policies, not disclosing the existence of those policies to First Penn. He then met with an insurance settlement agent, telling him that he was terminally ill, and sold the policies.

“There shouldn’t have even been a market for his policy, and yet Answer Care sold [the] \$2 million policy for \$1.1 million,” Caiola said.

Intent, but no agreement

First Penn found out about Moore’s scheme in 1999 and tried to rescind the policy, but the action was opposed by William R. Evans Chtd., the legal title owner of the policy, in which there were 49 investors.

First Penn initiated litigation in 2001, outside Arizona’s two-year contestability window, and the litigation was dismissed because the Answer Care receivership case was still pending.

At the time, the dispute was low-stakes; even if the investors successfully fought the revocation of Moore’s policy, all they would get would be a policy on a man who could live well beyond the policy’s expiration date.

On May 12, 2004, that changed. Moore was found shot to death in the adult video store he owned in Yuma.

Caiola said there was no indication that one of the investors killed Moore, and a spokesman for the Yuma County Sheriff’s Office said the killer was someone Moore knew. The man, whom Captain Eben Bratcher said had “business and personal relationships” with Moore, fled to Phoenix and committed suicide after the murder.

First Penn refiled its complaint against Evans and Invotex in 2005, after the receivership case wrapped up.

In 2007, U.S. District Judge Andre M. Davis granted summary judgment to Evans and Invotex on the grounds that First Penn had not filed a court action within the two-year contestability period. Davis also mentioned in a footnote

that Moore held an insurable interest when he purchased the policy.

The 4th Circuit affirmed the ruling in an unpublished, per curiam opinion on Feb. 26.

It also agreed with Davis on Moore’s insurable interest, distinguishing his intent to resell the policy in the future from an insured who already has an agreement to assign the policy when it is issued. According to information on the Gallagher firm’s Web site, it was the first such ruling from a federal appellate court.

The case then settled. First Penn’s lawyer, Bryan D. Bolton of **Funk & Bolton** P.A., said he could not comment on the terms.

Doug Head, executive director of the **Life Insurance Settlement Association**, an industry trade group which submitted an *amicus curiae* brief to the 4th Circuit, said the court got it right.

“The facts are pretty bad here,” he said, “but the law is the law.”



SUBMITTED PHOTO

Receiver James A. Gordon praises his attorneys for holding ‘fast through a long period ... of uncertainty.’